

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WADE BEST,

Plaintiff,

vs.

CIV. No. 04-0357 BB/WDS

CITY OF ALBUQUERQUE,
GILBERT GALLEGOS in his
individual capacity, MICHAEL
ARBOGAST, in his individual
Capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court for consideration of Plaintiff's motion to amend his complaint (Doc. 38). This opinion and order will also dispose of a motion to dismiss and a motion for summary judgment filed by Defendant Gilbert Gallegos (Docs. 17, 90), who has been dismissed from this case in his individual capacity by consent of the parties. Finally, the Court will briefly address the status of a motion for partial summary judgment filed by Defendant City of Albuquerque (Doc. 19).

Motion to Amend: Plaintiff has deposed Defendant Arbogast as well as Officer Darcy Hoffman, who was on the scene at the time of the incident and who participated in the arrest of Plaintiff. As a result of this discovery, Plaintiff has asked permission to amend his complaint to add Hoffman as a defendant and to add a constitutional claim of wrongful arrest against both Arbogast and Hoffman. Plaintiff's proposed amended complaint also makes other changes to the original complaint that appear largely cosmetic in nature. A motion to amend a complaint should

be freely granted unless the amendment would be futile, the plaintiff unduly delayed before attempting to amend the complaint, or some other sufficient reason exists to deny the request to amend. *Bauchman v. West High School*, 132 F.3d 542, 559 (10th Cir. 1997).

The Court has reviewed the materials submitted by Plaintiff following discovery, as well as the allegations of the proposed amended complaint, and finds that Plaintiff has adequately stated claims against Officer Hoffman arising out of her participation in the incident. In addition, the claim for wrongful arrest that Plaintiff seeks to add against both Arbogast and Hoffman is not plainly without merit. Therefore, the Court cannot find that adding either Officer Hoffman as a defendant, or adding the claim for wrongful arrest, would be futile.

Defendants argue that Plaintiff unduly delayed in filing the motion to amend the complaint. The Court finds there was no undue delay in this case. If discovery reveals that another cause of action might be present, or another defendant should be added, justice requires that amendment of the complaint be allowed. Furthermore, since Officer Hoffman has already been deposed, it does not appear that a substantial amount of additional discovery will be necessitated by the amendment of the complaint. Should Defendants demonstrate a need for such additional discovery to the Court, the discovery deadline may be extended.

Based on the foregoing discussion, the motion to amend the complaint will be granted.

Gilbert Gallegos Motions: As the parties are aware, Defendant Gallegos has been dismissed from this case in his individual capacity (Doc. 116). This dismissal renders moot the motion to dismiss (Doc. 17) and the motion for summary judgment (Doc. 90) filed by Gallegos. In order to keep the Court's records current, both of these motions will be denied as moot.

Motion for Partial Summary Judgment: Defendants filed this motion in July.

Subsequently, Plaintiff was granted an opportunity to supplement his response to the motion for summary judgment following the completion of discovery (Doc. 89). To date, the Court has not received such a supplement. The parties should inform the Court as to whether discovery has been completed, and if so as to whether supplementation of the response is still contemplated.

ORDER

A Memorandum Opinion having been entered in this case, it is ORDERED that Plaintiff's motion to amend his complaint (Doc. 38) be, and hereby is, GRANTED. It is furthermore ORDERED that the motion to dismiss and motion for summary judgment filed by former Defendant Gallegos (Docs. 17, 90) be, and hereby are, DENIED as moot. Finally, the parties should inform the Court within fifteen (15) days of this Order as to the status of discovery in this case, as well as the status of the planned supplement, if any, to Plaintiff's response to the City's motion for partial summary judgment.

Dated this 27th day of December, 2004.



BRUCE D. BLACK
United States District Judge

ATTORNEYS:

For Plaintiff:

Robert J. Gorence
Louren Oliveros

For Defendants:

Robert M. White
Stephanie M. Griffin